



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/740,052	12/19/2000	Bruce Perlmutter	10360-079001/13361HUUS01U	4810
34645 7590 10/01/2008 Anderson Gorecki & Manaras, LLP Attn: John C. Gorecki P.O BOX 553 CARLISLE, MA 01741			EXAMINER DUONG, DUC T	
			ART UNIT	PAPER NUMBER
			2619	
			NOTIFICATION DATE	DELIVERY MODE
			10/01/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

john@gorecki.us
jgorecki@smmalaw.com
officeadmin@smmalaw.com

Office Action Summary

Application No.

09/740,052

Applicant(s)

PERLMUTTER ET AL.

Examiner

Duc T. Duong

Art Unit

2619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-10 and 12-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-10 and 12-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C2)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 recites the limitation "the links" in line 8. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3-10, and 12-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ma et al (U.S. Patent 5,953,338) in view of Staples et al (US Publishing 2002/0118671 A1).

Regarding to claims 1 and 10, Ma discloses a system for managing bandwidth of a remote link 142A-F (correspond to links 310-316 of fig. 3) in a virtual private network VPN 170 (fig. 1A) comprising a server 160 (fig. 2 col. 6 line 64-col. 7 line 8) for assigning a portion of the bandwidth of the remote link to at least one application group and a meter 145 (fig. 2 col. 7 lines 20-38) associated with the server that will meters the

Art Unit: 2619

packets flow over the remote link to minimize contention between application groups for a portion of the bandwidth of the remote link (col. 7 line 43-col. 8 line 12), wherein the remote link has a smaller bandwidth than a bandwidth of other links 141A-D (correspond to link 302 of fig. 3) on the network that are connected to the VPN server or the meter, and wherein the remote link is remote from the VPN sever such that the remote link is not directly connected to the VPN server or the meter (fig. 3 col. 5 lines 63-66).

Ma fails to teach for the server is virtual private network VPN server configured to at least one authenticate, encapsulate, and de-encapsulate at least a portion of the packets.

However, Staples discloses a data communication system comprising a VPN server 122 for performing authentication of user and encryption of data (fig. 25B page 35 paragraph 0421).

Thus, it would have been obvious to a person of ordinary skill in the art to employ the server with VPN processing as taught by Staples in Ma's server. The motivation to do so would have been to enhance Ma's server functionality by providing authentication and encryption so that a higher level of security and quality of services can be achieved (Staples page 4 paragraph 0041).

Regarding to claims 3 and 12, Ma discloses all the limitation with respect to claims 1 and 10 including the server is directly connected to other links 302 having larger bandwidth than the available bandwidth of the remote links 310-316 (fig. 3 col. 9 lines 1-13).

Regarding to claims 4 and 13, Ma discloses the packets belonging to the application group (virtual path) share a pre-defined configuration (quality of service), and see col. 10 line 67 and col. 11 lines 1-2.

Regarding to claims 5 and 14, Ma discloses all the limitation with respect to claims 1 and 10 including the packets belonging to the application group contend equally for the portion of the bandwidth (fig. 6 col. 11 lines 60-63).

Regarding to claims 6 and 15, Ma discloses the meter manages flow rate of the packets going through the server in either direction (Fig.1B col. 6 lines 5-19).

Regarding to claims 7 and 16, Ma discloses the meter rejects the packets if the flow rate exceeds the assigned portion of the bandwidth (col. 8 lines 1-12).

Regarding to claims 8 and 17, Ma discloses all the limitation with respect to claims 1 and 10 including a user interface (client) that allows a user to specify the bandwidth of the link (fig. 6 col. 9 lines 25-32).

Regarding to claims 9 and 18, Ma discloses all the limitation with respect to claims 1 and 10 including a user interface (client) that allows a user to specify the assigned portion of the bandwidth (fig. 6 col. 11 lines 66-67 and col. 8 lines 1-18).

Response to Arguments

5. Applicant's arguments filed July 10, 2008 have been fully considered but they are not persuasive. In response to applicant's argument on pages 6-7 that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so

found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, such suggestion is cited in Staples page 4 paragraph 0041. Regarding to applicant's argument on page 7 that the remote links 310-316 of fig. 3 are directly connected to the ATM edge switch. In response, the examiner indeed agreed with applicant that Ma discloses of such assertion. However, Ma still read on the claimed limitation since the claims recited that the remote link is not directly connected to the server, which the remote links 310-316 in fig. 3 of Ma shows that they are not directly connected to the server 160. Thus, based on the reasons set forth here the rejections are maintained.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 2619

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc T. Duong whose telephone number is (571)272-3122. The examiner can normally be reached on M-F (8:00 AM-5:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wing Chan can be reached on 571-272-7493. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. T. D./
Examiner, Art Unit 2619

/Wing F. Chan/
Supervisory Patent Examiner,
Art Unit 2619
9/23/08